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Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Central Regional Office • 627 Main Street, Worcester MA 01608 • 508-792-7650

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RICHARD K. SULLIVAN JR.
Secretary

KENNETH L. KIMMELL
Commissioner

Assabet Sand and Gravel Company, Inc.
16 Knox Trail
Acton, MA 01720

Re: BWP – Acton

FMF ID #132423

Attention: Douglas J. Macone, President

NOTICE OF ENFORCEMENT CONFERENCE

THIS IS AN IMPORTANT NOTICE. FAILURE TO RESPOND TO THIS
NOTICE COULD RESULT IN SERIOUS LEGAL CONSEQUENCES.

Dear Mr. Macone:

Massachusetts Department of Environmental Protection ("MassDEP") personnel observed during an inspection of Assabet Sand and Gravel Company, Inc. on April 29, 2011, activity not in compliance with one or more laws, regulations, orders, licenses, permits or approvals enforced by the MassDEP. The noncompliance included:

HAZARDOUS WASTE

1. Failure to properly mark and label container(s) and/or tank(s) accumulating waste oil and/or used oil fuel, in violation of 310 CMR 30.341(2), as referred to by 310 CMR 30.253(6)(b) and 30.351(8)(a). Specifically, the waste oil tank in the garage was not labeled "hazardous waste", "toxic" or with the accumulation start date. A drum of "used oil fuel" in the trailer next to the garage was also missing the required wording.
2. Failure to record every inspection in an inspection log or summary, in violation of 310 CMR 30.342(1)(d)2 as referred to by 310 CMR 30.253(6)(b) and 30.351(8)(b). Specifically, the Company did not have a log of weekly inspections of their waste oil tank and containers.

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3. Accumulation of hazardous wastes exceeding the time limit of one hundred eighty (180) days for a Small Quantity Generator of waste oil and failure to comply with the requirements of a Department-approved storage facility, in violation of 310 CMR 30.351(6)(c), as referred to by 310 CMR 30.253(6)(b). Specifically, the Company was storing waste oil for more than six months in a tank (the last waste oil pickup was May 13, 2009). The Company stored waste oil for more than six months also between pickups on November 7, 2007 and August 4, 2008 and August 4, 2008 and May 13, 2009.

SURFACE WATER

4. Discharge of process wastewater to a pond offsite without being authorized to do so under the provisions of an EPA/MassDEP-issued National Pollutant Discharge Elimination System (NPDES) Permit, in violation of 314 CMR 3.03(1). Specifically, sand and gravel wash water is discharged to a silt settling lagoon and catch basins. The lagoon and basins discharge to a neighboring pond offsite. The discharge from the lagoon into the pond during the inspection was highly turbid.
5. Failure to obtain authorization under the provisions of an Environmental Protection Agency (EPA) and/or MassDEP-issued Surface Water Discharge Permit to discharge storm water from the Facility to the waters of the Commonwealth, in violation of 314 CMR 3.04(1). Specifically, the Company has not submitted an NOI to EPA for its storm water discharges offsite to neighboring ponds and settling areas.

Please see the attached Inspection Report for further details.

MassDEP intends to take enforcement action in response to your noncompliance. Possible actions include issuance by MassDEP of an Administrative Consent Order, a Unilateral Administrative Order, a civil administrative penalty and/or referral of the matter to the Attorney General's Office for civil or criminal prosecution. Prior to proceeding with enforcement action, MassDEP requests that you attend an enforcement conference at this office on the following date and time:

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LOCATION: Department of Environmental Protection
627 Main Street
Worcester, Massachusetts 01608

Concord Conference Room

DATE: June 21, 2011

TIME: 9:30am

The purpose of the enforcement conference is (1) to provide you with the opportunity to discuss the alleged violations; (2) to allow MassDEP to gather additional information concerning the violations; (3) to discuss solutions to ensure your return to compliance; and (4) to begin to define the terms of an agreement, including any penalty conditions of a final enforcement document. By copy of this letter to the local board of health, MassDEP is informing the local authority of this enforcement conference but they will not be participants in the meeting.

At the enforcement conference, MassDEP may discuss assessment of a civil administrative penalty for the alleged violation(s). MassDEP considers several factors in determining whether to assess a penalty and the amount of a penalty for each violation. Some of the factors that MassDEP considers, and for which you may wish to provide information, include, but are not limited to, whether you took steps to prevent the violation, or to promptly return to compliance after the violation, or to remedy and mitigate any harm caused by the violation; your financial condition; the public interest; and any other information you would like to provide. Please note that if you intend to assert that you do not have the ability to pay some or all of a penalty, MassDEP will require that you provide documentation to support your assertion.

MassDEP believes that the prompt resolution of this enforcement case in a manner which ensures your expeditious return to compliance and that resolves all penalty issues is beneficial and consistent with MassDEP's environmental protection goals. Prompt settlement may also decrease the resources you and MassDEP might expend on protracted litigation of the issues.

If you either do not attend the enforcement conference or do not reach a negotiated settlement, MassDEP will initiate appropriate enforcement action and you will have limited, if any, further opportunity to reach a negotiated settlement of this case

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Please contact Giles Steele-Perkins at (508) 767-2767 to confirm your attendance at the enforcement conference or if you have any questions. If you will be attending the enforcement conference with counsel, please let us know so that Department counsel may attend as well.

Very truly yours,

06/21/11
DATE

John F. Kronopolus
John F. Kronopolus
Section Chief
Bureau of Waste Prevention

JFK/GS-P

enclosure

cc: File Copy/Data Entry, BWP/MassDEP/CERO
Acton Board of Health
Acton Water District
ecc: Scott Fortier, MA Office of Technical Assistance
Electronic Archive, Regional Enforcement Coordinator

BWP/CERO
FIRST Compliance Evaluation Inspection Report

Note: Inspection documents are enforcement sensitive and not considered public records until after all associated enforcement is finalized by MassDEP

Facility Name: Assabet Sand & Gravel Co., Inc. FMF #: 132423

Inspection Date(s): April 29, 2011 Inspection Type: multimedia

Report Date: May 3, 2011

MassDEP Inspector(s): Giles Steele-Perkins, BWP; Marielle Stone, BRP;

FACILITY INFORMATION

Facility Representative(s): Douglas J. Macone, President; Ross Wheeler, manager; Chris Allen, District Manager, Acton Water District

Number of Employees: 6

Hours of Operation: 7:30 am – 4:00 pm, Monday – Friday

PERMIT HISTORY and Status Information: (optional, included in pre-inspection report)

AQ:	Air Classification: not applicable ("n/a")
	Source Registration: n/a
HW	Hazardous Waste Status: VSQG RCRA/SQG MA
	HW ID #: MAD019621556
IWW	Industrial Wastewater Classification: n/a
SW	Solid Waste Facility Classification: n/a

ENFORCEMENT HISTORY:

Date Of Last Inspection: April 23, 1998 Inspector: Kim McCoy

COMPLIANCE ASSESSMENT (According to guidance protocol, was any non-compliance found in:)

Air Quality	Yes___ No_x
Hazardous Waste (RCRA and MA)	Yes_x No___
Industrial Wastewater	Yes_x No___
TURA	Yes___ No_x
Solid Waste	Yes___ No_x
Referral needed other program	Yes___ No_x

A. VIOLATION SUMMARY

1. Storing waste oil for more than 180 days.
2. Not properly labeling a waste oil tank and drum.
3. Not recording weekly waste oil accumulation area inspections.
4. Discharging pollutants to a surface water without a surface water discharge permit.
5. Discharging storm water offsite without an EPA general storm water permit.

B. GENERAL FACILITY DESCRIPTION

The facility is a sand and gravel operation located next to the Assabet River on the Acton/Concord line. The Company trucks earthen materials from pits in Lancaster, MA, Heneker, NH and Greenville, NH to the facility and crushes and separates them into various products. The products include sand, stone dust, pea stone, 3/4 inch stone and 1 1/2 inch stone.

The purpose of this inspection was to evaluate the facility's compliance with MassDEP's regulations pertaining to hazardous waste, air pollution control, waste water permitting and toxic chemical usage. The inspection was performed with the Bureau of Resource Protection, who had been alerted of potential impacts to nearby Town of Acton drinking water wells.

C. PROCESS/WASTE MANAGEMENT/RECORD KEEPING SUMMARY

UO#1 – Sand and Gravel Plant

UO#2 – Vehicle Maintenance

UO #1: - Sand and Gravel Plant

The processing plant, erected approximately 50 years ago, consists of, in the first section, a primary crusher, conveyers, a screen and a secondary crusher. A conveyor feeds the second section, which consists of a screen house, loading bins, a sand wash screw and stockpiling conveyers. A portable crusher and two portable screeners are also used around the site to size larger boulders. The plant was running at the time of the inspection and was piling washed sand.

Waste Streams

Air – dust (at drop points and from vehicle traffic) and products of combustion of diesel fuel burned in the diesel engines in the portable equipment and heavy vehicles. Minor dust was observed at the conveyor returning stone to the secondary crusher. Spray bars are available but were not used this day because of the recent rain. Vehicle dust is suppressed during dryer periods with a water truck. Noise from the machinery and falling rocks was noticeable but did not appear to be impacting neighbors.

Hazardous Waste – none.

Industrial Wastewater – Sand wash water is discharged from the second section of the plant through an elevated pipe to a silt settling basin. Overflow from the basin discharges to a pond next to the facility to the north through an underground pipe. Water that falls from the plant to the ground also discharges to the pond via catch basins and an underground pipe beneath the plant. Surface water run-off from rain events discharges to the northerly pond as well as to a westerly pond and the Powdermill Plaza stormwater retention basin to the south.

The discharge from the silt settling basin into the pond, and the pond itself, were very turbid on this day. This pond connects to another pond through an old railroad bed. The second pond's water was clearer. Its level was much higher than the Assabet River's across the street. There appeared to be no connection to the Assabet River other than through seepage on the downward side. Staff stated that the pond has flooded over the road to the river. Sedimentation offsite

from storm water was also observed in the woods to the north, in the westerly pond and at the culverts to the south.

The Company does not have permits for either discharges (process or storm water). It does have a storm water management plan prepared by an engineer dated August 17, 2010, however. The plan includes the offsite ponds as controls for the silt.

UO #2: - Vehicle Maintenance

Maintenance is conducted on the haul trucks, loaders, dozers and vehicles in a one bay garage. Little work has been conducted in the past two years because of slow business and a mechanic left, however. When oil is changed it is vacuumed from the trucks into a 350 gallon tank positioned over a concrete containment vault. According to the float gauge on the tank the tank was half full. A tank for fresh motor oil and one for fuel oil for the furnace were located next to it.

The floor of the garage has a sealed floor drain (closure is date unknown).

Drained oil filters are accumulated in a drum next to the tanks.

Parts are degreased in a 50 gallon (actual 20 – 30 gallons) Advanced Liquid Recycling parts washer using Safety Kleen premium solvent (flashpoint 148 degrees F, vapor pressure 0.2 mmHg).

Tires are stored in two 40 foot storage containers. The storage container next to the garage contained a drum of "offspec used oil fuel", "state regulated waste", but had a "nonhazardous", green label.

Waste Streams

Air – minor volatile organic compounds from the parts washer.

Hazardous Waste – Waste oil and parts washer fluid. The waste oil tank was only labeled "waste oil". It also needs "hazardous waste", "toxic" and, as a Small Quantity Generator, the accumulation start date. Manifests records show the last pickup to be May 13, 2009. The pickups prior were 8/4/2008 and 11/7/2007. The Company has thus stored the waste oil on several occasions for more than 180 days allowed of SQG's. The Company did not have an inspection log of the waste oil tank and accumulation area.

The parts washer solvent is replaced three or four times per year. As of March 2011 it is being shipped as waste oil.

Industrial Wastewater – None.

Toxics Use Reduction – No TURA chemicals were observed. The Company currently has fewer than 10 employees and is not subject to reporting.